

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SSP CAPITAL PARTNERS, LLC,

Case No.: 07 CV 3878 (NRB)

Plaintiff,

-against-

MANDALA LLC, HAROUST, LLC,
HAMILTON GRANGE, LLC, ARABARA, LLC
and 316 SECOND AVENUE, LLC,

Defendants.

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**DEFENDANTS' COUNTER-STATEMENT
OF CONTESTED AND UNCONTESTED FACTS**

Pursuant to Federal Rules of Civil Procedure,
Defendants, by their attorney, Michael T. Sucher, Esq.,
respectfully submit this Local Rule 56.1 Counter-Statement
of contested and uncontested facts.

1. Admitted.

2. Denied. Richard Kaplin, Esq. was not Defendants'
counsel. (Deposition of Richard Kaplin, Page 7; Derderian
Affidavit, ¶39-40).

3. Denied. The obligation to obtain an agreement to
reinstate senior loans was not part of the subject February
22, 2007 commitment letter. (Exhibit "C", February 22, 2007
commitment letter).

4. Denied. Richard Kaplin, Esq. was not Defendants'
counsel, and Mr. Derderian never received Mr. Grodsky's
letter. (Deposition of Richard Kaplin, Page 7; Derderian
Affidavit, ¶39-41).

5. Denied. As late as April 2007, Defendants were still seeking to close a loan with Defendants. (Exhibit "E", April 16, 2007 letter from Mr. Derderian to Plaintiff).

6. Admitted.

7. Admitted.

8. Neither admitted nor denied. No evidence exists in the record to dispute the truth of this assertion. Defendants assert, however, that such "fact" is not material.

9. Neither admitted nor denied. No evidence exists in the record to dispute the truth of this assertion. Defendants assert, however, that such "fact" is not material.

**ADDITIONAL MATERIAL FACTS AS TO WHICH IT IS CONTENDED THAT
THERE EXISTS A GENUINE ISSUE TO BE TRIED**

10. The parties did not intend that the February 22, 2007 proposed commitment letter would require Defendants to borrow money. (Derderian Affidavit at ¶35).

11. The February 22, 2007 proposed commitment letter does not contain any language requiring Defendants to borrow money. (February 22, 2007 commitment letter at Exhibit "C").

12. The parties did not contemplate nor intend that the February 22, 2007 proposed commitment letter would require Defendants to pay Plaintiff lost profits if the loan did not close. (Derderian Affidavit at ¶33-34).

13. The February 22, 2007 proposed commitment letter does not contain any language requiring Defendants to pay Plaintiff lost profits if the loan did not close. (February 22, 2007 commitment letter at Exhibit "C").

14. The February 22, 2007 proposed commitment letter required an additional deposit of \$10,000 to be made in order for it to be binding. (February 22, 2007 commitment letter at Exhibit "C"; clause entitled "Borrower Deposit" and last sentence on page 5 thereof).

15. Defendants intended not to be bound by the February 22, 2007 proposed commitment letter unless and until they received a signed commitment back from Plaintiff. (Derderian Affidavit at ¶25).

16. Defendants intended not to be bound by the February 22, 2007 proposed commitment letter unless and until they made an additional payment. (Derderian Affidavit at ¶22).

17. Shortly after February 22, 2007, Plaintiff's representative, Michael Gordon demanded an additional \$10,000 deposit from Defendants. (Derderian Affidavit at ¶21).

18. Plaintiff was never ready to close the subject loan. (Derderian Affidavit at ¶41).

19. Plaintiff never set a firm closing date for the loan. (Derderian Affidavit at ¶41).

20. No firm closing date was ever communicated to the Defendants by anyone. (Derderian Affidavit at ¶41).

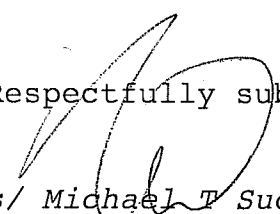
21. Plaintiff never set a time of the essence closing date. (Derderian Affidavit at ¶41).

22. Plaintiff never transmitted a complete set of proposed closing documents to Defendants. (Derderian Affidavit at ¶41).

23. Defendants never received a complete set of proposed closing documents from anyone. (Derderian Affidavit at ¶41).

Dated: Brooklyn, New York
September 10, 2008

Respectfully submitted,


s/ Michael T. Sucher, Esq.

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